

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10565 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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MANAGER INDO PESECIFIC

PLYBOARDS PVT LTD.

Versus

MAHAGUJARAT LABOUR UNION

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Appearance:

MR DN PATEL for Petitioner

MS KB NAIR for Respondent No. 1

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CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 18/12/98

ORAL JUDGEMENT

RULE.

Heard the learned Advocates for the parties. Service of 8 workmen were terminated by the petitioner company as such industrial dispute was raised which culminated in Reference to the Labour Court, Ahmedabad. The workmen were directed to be reinstated with full backwages by order datted 23.5.1997. The petitionr Company filed an

application under Rule 26A of the Industrial Disputes (Gujarat) Rules, 1966 for setting aside the ex-parte award. The application was contested on the ground that the award was not ex-parte. It was pointed out that the written statement was filed and the Company was permitted to cross-examine the witnesses. Certain documents were also filed by the Company. The Lawyer of course, pleaded no instructions, and therefore, the Court proceeded ex-parte. Considering all facts and circumstances of the case, the Labour Court declined to set aside the ex-parte award by order dated 12.9.1997.

2. Mr D N Patel, Ld. Advocate appearing for the petitioner submits that the copy of the award dated 23.5.1997 was received on 20.8.1997 and the application was filed on 12.9.1997, and as such there was no substantial delay in filing the application. The Ld. Advocate appearing for the respondent No.1 states that in fact copy of the award was received on 11.7.1997. The respondent Union had also written letter to the Company on 20.7.97. In view of this, there is delay in filing the application. It is further submitted that the Labour court for just and proper reason, declined to exercise the discretion for setting aside the ex-parte award which does not call for interference by this Court in exercise of powers under Article 227 of the Constitution of India.

3. I have considered the rival contentions. So far as the delay in filing the application is concerned, even if it is assumed that the copy of the award was received by the Company on 11.7.1997, it cannot be said that the delay was of a larger period which cannot be condoned. It is now well established that in the matter of limitation, the Court is required to adopt a liberal attitude. So far as the reason for setting aside the ex-parte award is concerned, there appears to be some misunderstanding between the Company and its Counsel, on account of which if the concerned workmen have suffered, that can be adequately compensated. It is desirable that the award is answered on merit.

4. In view of the aforesaid, this Special Civil Application is allowed and the impugned order dated 15.6.1998 and the award dated 23.5.1997 passed by the Labour Court, Ahmedabad is quashed and set aside on payment of compensatory cost of Rs.16,000/-. i.e. Rs.2000/- (Two thousand only) shall be paid to each of the workmen. The case will be reopened only on payment of the said cost. The party shall appear before the Labour Court on 20.1.1999. The Labour Court shall proceed with the matter from the point where the learned

Advocate for the Company left and complete the entire proceedings by 31.7.1999. Rule made absolute to the aforesaid extent.

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msp.